



April 30, 2020

The Honorable Nancy Pelosi  
Speaker  
United States House of Representatives  
Washington, DC 20515  
20510

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives  
Washington, DC 20515  
20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
Washington, DC

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

The undersigned organizations appreciate the swift actions already taken by Congress and the Administration to address the COVID-19 pandemic.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel (including legwear), footwear and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, we are the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its nearly four million U.S. workers, and its contribution of more than \$400 billion in annual U.S. retail sales.

The Council of Fashion Designers of America, Inc. (CFDA) is a not-for-profit trade association founded in 1962 with a membership of 477 of America's foremost womenswear, menswear, jewelry, and accessory designers. The organization provides support to its Members with timely and relevant thought-leadership and business development information. Emerging designers and students are supported through professional development programming and numerous grant and scholarship opportunities. In addition to hosting the annual CFDA Fashion Awards, the organization owns the Fashion Calendar and is the organizer of the Official New York Fashion Week Schedule. The CFDA Foundation, Inc. is a separate, not-for-profit organized to mobilize the membership to raise funds for charitable causes and engage in civic initiatives.

The Travel Goods Association (TGA) is the national organization that represents the manufacturers and retailers of travel products. Comprising a \$31.2 billion-a-year industry, travel goods include luggage, casual bags, computer cases, backpacks, handbags and travel accessories – those items consumers use every day while traveling to work, across campus or around the world. TGA is the organizer and sponsor of The Travel Goods Show, the largest annual exhibition of travel products in the world.

In an effort to slow the spread of COVID-19, our members have been suspending/limiting operations to keep their workers and consumers safe, consistent with global health guidelines and empowering or

repurposing facilities, factories, and supply chains to produce and distribute items of personal protective equipment and other urgently needed medical materials. We appreciate the CARES Act stimulus measures, however there are several other opportunities to help the retail and manufacturing sector. We write today to urge you to take additional steps as Congress develops the contents of the fourth COVID-19 stimulus package.

We implore you to include the following provisions as we reopen the country and bring Americans back to work:

## **THE CARES ACT RECOMMENDATIONS**

### **The CARES Act Payment Protection Program (PPP)**

As we have all learned throughout this crisis, the current situation won't be quickly resolved. As such, we are concerned with the PPP's eight-week loan forgiveness ceiling. As we already know, this crisis will affect our member businesses, and the U.S. economy, well beyond eight weeks. In addition, the requirement to return to full employment this summer, when many parts of the country will likely still be on some form of lockdown is unrealistic, potentially curbing the benefits of PPP. We also support the ability to use PPP loans for other purposes beyond payroll, rent, and utilities to include payments to vendors. This provision should be revised accordingly.

Further, under the current rules, our associations have no access to PPP benefits because we, like most other trade associations, are organized under Section 501(c)(6) of the Internal Revenue Code. Like our members, our association faces enormous economic uncertainty due to the ongoing COVID-19 crisis. Therefore, we request the extension of eligibility for the PPP to Section 501(c)(6) organizations, allowing them to maintain their employees and continue to serve as a resource for our members and the economy during these uncertain times.

Lastly, we strongly urge that SBA adopt the most lenient view possible when administering its affiliation tests to make sure the relief can be applied to as many companies as possible. For example, affiliation rules that group a company with a private equity (PE) or venture capital (VC) firm that has partial or majority ownership could disqualify many small businesses and countless employees if applied to strictly. What's particularly troubling about this scenario is that some companies – by virtue of these arbitrary PE/VC rules – could be lumped in, and therefore disqualified from PPP support, with other entities from different businesses or that share no characteristics. For example, a small fashion retailer that is majority owned by a VC firm that also owns a movie theater and gas station would be disqualified from PPP support if the combined number of employees of these three enterprises and the VC firm exceeds 500. We believe each entity should be counted as a single entity – and not combined with other entities in a portfolio – for purposes of assessing whether a business is small. We further recommend using the North American Industry Classifications System (NAICS) when performing this assessment so that entities within a portfolio that have different NAICS codes be assessed together.

### **The CARES Act Employee Retention Credit**

The CARES Act employee retention credit has been helpful to our members, but insufficient to meaningfully help companies retain payroll through the extent of this downturn. For certain businesses, a cap of \$10,000 in eligible wages doesn't match the scope of the impact to their business where many have entirely shut down operations to comply with local orders and to keep employees safe. We request that the wage limit cap be raised from \$10,000 to \$30,000 as well as clarifying that a partial credit be allowed for employees performing partial services. The wage limit cap should also be raised for larger businesses accordingly and "qualified wages" should be expanded to include wages that are paid to workers that are still working at large companies. These changes would help companies get through this crisis with their workforce mostly intact.

### **The CARES Act Net Operating Loss (NOL) Carryback**

Because short-term liquidity is critical for many apparel retailers and brands, we suggest speeding up the cash benefits of the NOL Carryback in the CARES Act by following a system similar to the estimated tax payments process whereby previously profitable companies estimate their pro forma 2020 tax losses and are immediately able to monetize these losses against prior taxable income, on an expedited refund basis. A threshold could be provided (e.g., 75% of estimated benefit) to protect for variability in estimated losses with a true-up at year-end. This action could be done administratively.

Another opportunity to provide companies with the liquidity they need now would be to expand the NOL carryback by permitting carryback for 10 years. The NOL carryback in the CARES Act is currently 5 years. Further, we request changing ordering rules so that Global Intangible Low-Tax Income (GILTI) does not eliminate benefits of the carryback that was added by the CARES Act.

### **Main Street Lending Program**

Due to the restrictions of the main street lending program, many mid- and large- size companies do not qualify because they employ more than 10,000 individuals and/or earned more than \$2.5 billion in revenue in 2019. By lifting the employee cap and increasing the lending amounts, more companies will be able to take advantage of the program. This is particularly important for mid- and large-sized retailers as the work to re-open stores and put employees back to work in what will likely be months before revenue starts flowing back into the retailer.

## **TRADE-RELATED RECOMMENDATIONS**

### **Duty Deferral**

While our members appreciate the recent duty deferral actions, it will not benefit many companies because certain important duties have been excluded and because it only covers imports made during March and April. To help manage this unsustainable situation so we can keep Americans employed, we recommend the extension of the program to cover imports made during May and June, and possibly additional months if the crisis persists, and expand the program to defer the due dates for ALL duties and fees. Deferring these tariffs - which will ultimately be repaid - gives employers access to critical resources they can use to support payroll and pay other critical business expenses.

### **Tariff Relief**

Many companies are now using their supply chains and factories to produce and deliver items of personal protective equipment (PPE) to hospitals and patients. But, incredibly, those items still face tariffs, putting American patients, and American jobs, at risk. We urge the suspension of collection of duties - both MFN duties and Section 301 tariffs - that are paid on urgently needed PPE.

### **Foreign Trade Zones (FTZ)**

There is a high volume of product supply that has, or will be, entering the U.S. for the spring, summer and fall seasons. Because of significantly decreased demand, retailers will be unable to sell through the incoming supply in the current retail environment. E-commerce demand and, where permitted, curbside pick-up demand are insufficient to consume the incoming supply of goods. This leaves retailers with difficult choices: either attempt to sell the goods to off-price liquidators for pennies on the dollar, donate or destroy the goods, or store those goods until the appropriate selling season next year. Storage will require temperature-controlled storage facilities for up to 12-14 months. The limited capacity at Foreign Trade Zone (FTZ) storage facilities will create a cash-flow crisis if retailers are forced to pay duties on those goods at the time of transfer to non-FTZ offsite facilities.

Allowing Foreign Trade Zones to temporarily remove items to off-site, non-activated, secure warehouses for storage of between 12 and 14 months while allowing those goods to maintain their non duty-paid status during storage will significantly ease cash flow concerns and provide retailers the opportunity to salvage goods to sell next year. We request that the stimulus package permit this FTZ treatment for offsite storage and permit relaxation on FTZ transfer requirements for certain seasonal product.

### **Customs Bond Requirements**

For companies that import products, Customs and Border Protection (CBP) requires the importer to have a Customs Bond. A Customs Bonds assures CBP that the importer is able to fulfill their financial responsibilities for duties, penalties and other fees. CBP should review the current bond requirements so that the surety can lower the collateral requirements. This would provide companies the liquidity they desperately need to pay employees.

### **Caribbean Basin Trade Partnership Act (CBTPA)**

The Caribbean Basin Trade Partnership Act (CBTPA) will celebrate its 20<sup>th</sup> anniversary on May 20 and is set to expire on September 30, 2020. With the coronavirus crisis, continued certainty in this region is critical now more than ever. Our members have been proud to work on, support enactment of, and operate under this program during the past two decades. Since it was enacted, the CBTPA – along with the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act, and the Haiti Economic Lift Program (HELP) Act – has provided an important trade policy basis to support U.S. investment in and exports to U.S. allies in the Caribbean Basin. We request the renewal of this critical program especially during these challenging times and especially because companies using this program are now involved in efforts to make and distribute urgently needed PPE.

### **Generalized System of Preferences (GSP)**

The Generalized System of Preferences (GSP) is set to expire at the end of 2020. The GSP program allows American businesses to use duty-savings to compete internationally, lower costs for American families, hire more American workers, and invest in new products. GSP is also an effective enforcement tool to open foreign markets, protect intellectual property, and improve workers' rights. With the coronavirus debilitating supply chains, renewing and modernizing the GSP program will be a critical component to reopening the country and improving the economy.

## **OTHER RECOMMENDATIONS**

### **Foreign Tax Credit Carryforward Extension**

The economic downturn significantly impacts companies' ability to use foreign tax credits, which are normally subject to a 10-year carryforward rule. We request the rule be expanded to a 13-year carryforward period by amending the language in Section 904(c) of the Internal Revenue Code from "10 succeeding years" to "13 succeeding years" with respect to credits carried forward from tax years ending after December 31, 2009 and on or before December 31, 2011.

### **Business Interruption Insurance**

Current business interruption coverage is triggered by a loss under property insurance, which requires direct physical damage to the business' facility or facilities such as fire, wind damage, explosion, etc. Loss of ingress or egress by civil authority is covered under business interruption but again the trigger for coverage is direct physical damage. In addition, many property policies include exclusions for loss caused by virus or bacteria with language that is or similar to: "any virus, bacterium, or other microorganism that induces or is capable of inducing physical distress, illness or disease."

The loss of business income from reduction of business due to fear of contagion or closure by civil authority is not considered direct physical damage and hence if there is not a direct virus exclusion, the lack of direct

physical damage bars recovery from an insurer for most businesses suffering severe reductions or closure caused by COVID-19. We request the establishment of a reinsurance program, such as that contained in the Pandemic Risk Insurance Act (PRIA), to provide a federal backstop so that business interruption insurance can effectively cover such pandemics in the future, notwithstanding the lack of direct physical damage. We further ask that such backstops allow coverage retroactive to the date consistent with the outbreak of the COVID-19 pandemic and enactment of closure orders and/or restrictions for businesses.

### **Inventory & Donation Tax Credit**

As was said earlier, there is a high volume of product supply that has, or will be, entering the U.S. for the spring, summer and fall seasons that companies will be unable to sell through the incoming supply in the current retail environment. We request that an inventory tax credit be given for companies carrying excessive amounts of inventory due to the COVID-19 crisis without limitation on company size or sales. Further to the inventory tax credit, we request a credit for inventory that was donated to charity in the form of a product charitable donation tax credit.

### **PPE Liability Protection**

In order to provide liability protection for manufacturers developing desperately needed PPE to support front line health care providers, we seek a broadening of the FDA's Emergency Use Authorization issued on April 18, 2020 (relating to "Face Masks") to additionally cover "Surgical Masks Intended to Provide Liquid Barrier Protection" as defined in Section E of the FDA's "*Enforcement Policy for Face Masks and Respirators During the Coronavirus Disease (COVID-19) Public Health Emergency (Revised)*" of April 2020.

Extending the FDA's EUA to cover such surgical masks, thereby allowing them to fall within the limited liability immunity protection of the PREP Act and the HHS Department "*Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19*" of March 17, 2020, is vital in providing manufacturers with the support and protection necessary to distribute masks providing a substantial degree of liquid barrier protection which are greatly needed by the medical community to protect them during this emergency.

### **Shop Safe and Healthy Tax Credit**

Apparel and footwear retailers are beginning to retrofit their stores to accommodate the installation of protective equipment to keep their employees and customers safe and healthy. These additional and unexpected costs will constrain cash flow and impact the ability for stores to install these protective health measures.

Congress should provide tax credits for investments/improvements required in the current and post COVID-19 environment (i.e. physical barriers, technology, expenses related to cleaning and reconfiguring stores and distribution centers, etc.), which will provide a safe shopping environment for employees and customers.

### **Childcare Funding**

Many childcare centers have closed under stay-at-home orders and in response to decreasing enrollment as families with children are working from home or are facing unemployment. Revenue for these businesses (of all sizes) has dried up, with many childcare providers not able to meet operating expenses and furloughing or laying off teachers and staff. If childcare providers are not ready to reopen their doors when employees are asked to come back to work, millions of Americans won't be able to return to their jobs or reopen their businesses. This has been exacerbated by plans in many states to re-open businesses while keeping schools closed for the remainder of the year. This means childcare will be needed for millions of school-age children as well.

We request funding the \$50 billion plan put forth by Senators Elizabeth Warren and Tina Smith to invest in our childcare system to help ensure that providers who have closed their doors and face laying off teachers and staff can be ready as a resource for parents when the time comes for them to go back to work.

Thank you again for all that you are doing during this difficult time and for considering these additional policy recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lamar". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Lamar  
President and CEO  
American Apparel & Footwear Association

A handwritten signature in black ink, appearing to read "Steven Kolb". The signature is cursive and somewhat stylized, with a prominent "S" and "K".

Steven Kolb  
President and CEO  
Council of Fashion Designers of America

A handwritten signature in black ink, appearing to read "Michele Marini Pittenger". The signature is highly cursive and elegant, with a long, flowing tail.

Michele Marini Pittenger  
President and CEO  
Travel Goods Association